

1050 17th Street, N.W.
Suite 1150
Washington, DC 20036
202.525.5717



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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

December 6, 2017

Notice of Ex Parte

In re Credit Union National Association Petition for Declaratory Ruling, Rules and Regulations Implementing the Telephone Consumer Protection Act, GC Docket No. 02-278

Dear Ms. Dortch,

R Street Institute (“R Street”) writes to the Federal Communications Commission (“FCC” or “Commission”) to express support for the petition for declaratory ruling filed by the Credit Union National Association (“CUNA”) in the above-captioned proceeding regarding proposed new exceptions to the Telephone Consumer Protection Act (“TCPA”).¹ As explained below, the two TCPA exceptions sought by CUNA are within the FCC’s authority to grant and warranted in light of recent changes in technology and consumer habits. The FCC should adopt both exceptions via declaratory ruling as requested.

Currently, the TCPA allows credit unions to call “residential line[s]” using automated dialing systems or prerecorded messages, even without prior consent from the called party.² However, the TCPA prohibits using these systems to call or text mobile phones unless the calling party has obtained prior express consent from the called party.³ This prohibition is intended to protect consumers from privacy or financial harms resulting from unwanted calls and texts, but it also often prohibits credit unions from providing their members with beneficial information that could improve members’ financial preparedness.⁴ Thus, the Act designed by Congress to protect telephone consumers is now

¹ Petition for Declaratory Ruling, *Credit Union Nat’l Assoc.*, GC Docket No. 02-278 (Sept. 29, 2017) [hereinafter CUNA Petition], <https://goo.gl/KyPpiL>.

² See, e.g., CUNA Petition at 3 (citing 47 C.F.R. § 64.1200(a)(3)(ii), (iii)).

³ 47 U.S.C. § 227(b)(1)(A)(iii).

⁴ See, e.g., CUNA Petition at 2–3, 5.

having the perverse effect of harming some of the most vulnerable and financially-distressed consumers in America.⁵

To remedy this situation, CUNA requests two potential exceptions to the TCPA. The first request is for an exception in the case of an established business relationship (“EBR”).⁶ In addition, or as an alternative, to the EBR exception, CUNA asks for a TCPA exception for all communications that are in fact free to the recipient, as allowed by statute.⁷ These two proposed exceptions both have merit, and R Street asks the FCC to grant CUNA’s request by issuing a declaratory ruling establishing each as a new exception to the TCPA.

Proposed Exception for EBR

As explained in CUNA’s petition, prior Commission precedent and the current realities of the telephone marketplace warrant an exception for informational calls made over a wireless connection within the context of an EBR.⁸ The FCC issued an EBR exception for calls made to residential landlines back in 1992, but has never extended that exception to cover wireless telephone lines despite the fact that most adults—and the vast majority of young adults—now live in wireless-only households.⁹

Declaring that the EBR exception also covers wireless connections would be a simple way for the FCC to bring its TCPA regulations up to date with current technological and economic realities. While the TCPA does not contain a statutory provision explicitly allowing the Commission to grant exceptions based on an existing business relationship, the Commission previously granted such an exception for informational and telemarketing calls over wired connections to consumers who have an existing business relationship with the caller, so it should have ample authority to extend the EBR exception to wireless connections.¹⁰

Extending the EBR exception to informational calls made over wireless connections is also perfectly in keeping with congressional intent behind the TCPA, as calls within the context of an EBR are unlikely to adversely affect consumers’ privacy interests.¹¹ R Street urges the Commission to extend the EBR exception to wireless connections as requested. However, to ensure that others’ privacy interests remain protected, the Commission should make

⁵ *Id.* at 5–6.

⁶ *Id.* at 8.

⁷ *Id.* at 15; 47 U.S.C. § 227(b)(2)(C).

⁸ *See* CUNA Petition at 8–15.

⁹ *See, e.g., id.* at 9.

¹⁰ *Id.* at 8.

¹¹ *See id.* at 11–15.

clear that the EBR exception applies only to informational calls to credit union members and that credit unions may not make informational calls to just anyone who might be interested in their services.

Proposed Exception for Free Communications

As an alternative, or in addition, to the requested EBR exception, CUNA requests a TCPA exception for credit unions' informational calls and messages sent over wireless connections if the calls and messages are in fact free for the called party.¹² R Street supports this requested exception, which the Commission has authority to recognize under the TCPA,¹³ due to the changing nature of telephone service. Previously, a TCPA exception covered only communications that a credit union knew to be free for the called party beforehand.¹⁴ However, that requirement is overly burdensome in light of substantial changes in the telephone marketplace. Thus, the Commission should use its authority to grant a new exception for free informational calls and messages to wireless connections in order to rationalize the TCPA rules for today's mobile marketplace.

The nature of telephone usage, marketing and billing has changed dramatically since 1991, when the TCPA was passed.¹⁵ Today, 95 percent of American adults own mobile phones.¹⁶ And, now that mobile payment plans now regularly provide unlimited calling and texting, customers often do not incur any added costs for additional text messages or minutes of calling. For example, 88 percent of U.S. mobile phones had unlimited texting plans in 2015.¹⁷ The prevalence of mobile phones and unlimited calling and texting plans means that credit unions' communications to their members are unlikely to impose any additional costs on recipients. Thus, the threat of financial harm resulting from unwanted communications in this context is greatly diminished, if not altogether removed.

Unlike traditional landlines, mobile phones also provide users with easy methods to opt out of communications from certain numbers by blocking them.¹⁸ Users who do not want

¹² *Id.* at 15–18.

¹³ 47 U.S.C. § 227(b)(2)(C).

¹⁴ See CUNA Petition at 16.

¹⁵ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991).

¹⁶ *Mobile Fact Sheet*, PEW RESEARCH CTR. (Jan. 12, 2017), <https://goo.gl/imJrEs>.

¹⁷ Josh Zagorsky, *Almost 90% of Americans Have Unlimited Texting*, INSTANT CENSUS (Dec. 8, 2015), <https://goo.gl/M11iia>.

¹⁸ See, e.g., Digital Trends Staff, *Stop Those Unwanted Phone Calls and Learn How to Block a Number in Android*, DIGITAL TRENDS (Nov. 10, 2017), <https://goo.gl/YicvKf>; *Block Phone Numbers and Contacts on Your iPhone, iPad or iPod Touch*, APPLE SUPPORT (Sept. 19, 2017), <https://goo.gl/It9j3n>.

informational communications from their credit union, even if they are free, can simply block the calls or texts, thus greatly reducing the threat of any privacy harms resulting from unwanted intrusions.

Given these technological advances and the widespread usage of unlimited plans, the requested TCPA exception for communications that are in fact free to the called party is clearly reasonable. R Street urges the Commission to establish this as an additional exception to the TCPA.

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In accordance with Section 1.1206(b) of the Commission's rules,¹⁹ this letter is being filed with your office. If you have any questions, please contact the undersigned.

Respectfully submitted,

_____/s/_____
Tom Struble
Technology Policy Manager
R Street Institute
tstruble@rstreet.org

Joe Kane
Technology Policy Associate
R Street Institute
jkane@rstreet.org

¹⁹ 47 C.F.R. § 1.1206(b).